IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(C).No. 32112 of 2006(W)

AGAINST THE ORDER IN E.A.33/06 IN EP.56/04 IN LAR.44/1998 OF SUB COURT, KASARAGOD.

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PETITIONERS:

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1. **SHARADA, WIDOW OF LATE KESAVA ALEVOORYA NERAPAPADY, KUMBADAJE, KASARGODE.**
2. **ARAVINDA KUMAR, S/O.LATE KESAVA ALEVOORYA, NERAPAPADY, KUMBADAJE, KASARGODE.**
3. **PADMANAYANA, D/O.LATE KESAVA ALEVOORYA, NERAPAPADY, KUMBADAJE, KASARGODE.**
4. **SATYANARAYANA, S/O.LATE KESAVA ALEVOORYA NERAPAPADY, KUMBADAJE, KASARAGODE.**
5. **KRISHNA PRASAD, S/O.LATE KESAVA ALEVOORYA, NERAPAPADY, KUMBADAJE, KASARAGODE.**
6. **ASHOK KUMAR, S/O.LATE KESAVA ALEVOORYA, NERAPAPADY, KUMBADAJE, KASARAGODE.**

BY ADV. SRI.K.I.MAYANKUTTY MATHER,
ADV. SMT.S.LAKSHMY.

W.P.(C). NO.32112/2006:

RESPONDENT:

THE SPECIAL TAHSILDAR (LA),
KASARGODE.

BY GOVERNMENT PLEADER SRI. SHYSON.P. MANGUZHA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.32112 OF 2006

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Dated this the 23rd day of October 2007

JUDGMENT

This writ petition is filed seeking to set aside Ext.P7 order. As per Ext.P7, the Sub Judge, Kasargod held that respondents are bound to deposit an amount of Rs.6,16,961/-. Petitioners are aggrieved by that order. A perusal of Ext.P7 order would reveal that the amount was deposited and full satisfaction was recorded and E.P. closed and thereafter judgment debtors filed an application contending that an amount of Rs.5,50,370.75 deposited is in excess of the amount. The court, by Ext.P7 order arrived at a decision and found that an amount of Rs.6,16,961/- is in excess and directed the claimants to redeposit that amount within 15 days. It is aggrieved by that decision, the present writ petition is filed.

2. Before this court, petitioners have filed a statement contending that total amount due on the date of attachment, i.e. on 17.5.2005 is Rs.16,66,000/-. It goes on and contends for the position that there is no excess amount deposited by the judgment debtors in the case. On the other hand, the judgment debtors has filed a statement to the effect that the total

amount due comes only Rs.11,15,625.30 excluding the tax whereas an amount of Rs.16,66,000/- is deposited and thereby there is an excess deposit of Rs.5,50,374.70.

3. After hearing both sides, I feel the matter requires reconsideration in the light of various decisions of this court and the Apex Court. Therefore the order under challenge is set aside and the matter is remitted back to the executing court with a direction to the Government as well as the claimants to file separate statements, which according to them, is the correct amount due and the court after hearing both sides, fix the amount due in accordance with law and if the amount deposited is found to be in excess, direct the petitioners to redeposit and in case there is shortage, direct the Government to deposit the balance amount. Parties shall appear before the court below on 30.11.2007.

M.N.KRISHNAN, JUDGE

Cdp/-